difficulty in one who has no legal title, giving a mortgage, *Flagg* v. *Mann* (U. S. 1837) 2 Sumn. 486, some courts seem doubtful about such a possibility. *Tweedie* v. *Clark* (1906) 99 N. Y. Supp. 856, see *Alexander* v. *Kellner* (1909) 131 App. Div. 809, 812, 116 N. Y. Supp. 98. But quite apart from the reasoning in *Tweedie* v. *Clark, supra,* the result reached in the instant case seems sound. Where parties attempt to graft a mortgage and a conditional sale contract upon one instrument, the provisions being contradictory, they should be construed against the party who drew them up, in this case the vendor.

STATUTE OF FRAUDS—CHECK AS PART PAYMENT.—The defendant vendor entered into an oral executory contract with the plaintiff for the sale of lambs, at a price exceeding fifty dollars. The parties intended the proceeds of the check to be in part payment of the purchase price, but there was no evidence that it was accepted as absolute payment. Subsequently, the check was destroyed by the defendant before presentation for payment. *Held,* the check was not such part payment as to take the contract out of the Statute of Frauds. *Gay* v. *Sundquist* (S. D. 1919) 175 N. W. 190.

"Part payment" within the meaning of the Statute of Frauds need not be in money but may be by anything of value given and accepted as part of the price. See *Rohrbach* v. *Hammill* (1913) 162 Iowa 131, 138, 143 N. W. 872. And so it has been held that a check given and accepted under an express agreement that it shall be absolute payment takes the case out of the Statute of Frauds. *Rohrbach* v. *Hammill, supra; Logan* v. *Carroll* (1897) 72 Mo. App. 613. There is no presumption of such an express agreement merely from the vendor's acceptance of the check; but the burden is on the party seeking to enforce the agreement to prove it. *Groomer* v. *McMillan* (1910) 143 Mo. App. 612, 128 S. W. 285. In the absence of such proof, the check will not be deemed such absolute payment as to take the case out of the Statute of Frauds. *Bates* v. *Dwinell* (1917) 101 Neb. 712, 164 N. W. 722; *Davis* v. *Phillips, Mills & Co.* (1907) 24 T. L. R. 4. But where the check has been presented and paid that will be sufficient part payment. *Hunter* v. *Wetsell* (1881) 84 N. Y. 549; see *Jones* v. *Wattles* (1902) 66 Neb. 533, 539, 92 N. W. 765. In the instant case, there was no express agreement to accept the check as absolute payment and it was not paid, so the Statute of Frauds was held to apply. Since a check is itself dealt with as cash, there seems to be no reason why it should not be sufficient payment, provided, of course, that the vendee has funds in the bank and does not interfere with its payment. *Cf. McLure* v. *Sherman* (C. C. A. 1895) 70 Fed. 190, 192.

TELEGRAPH AND TELEPHONE COMPANIES—STIPULATIONS LIMITING LIABILITY—VALIDITY.—The defendant sought to limit its liability for non-delivery of a message delivered to its messenger by a patron by means of a stipulation which provided that "if a message is sent by one of the company's messengers, he acts for that purpose, as the agent of the sender". *Held,* the stipulation is valid. *Collotta* v. *Western Union Tel. Co.* (Miss. 1920) 83 So. 401.

In the absence of a stipulation of this sort, a person provided by the company to receive messages is the agent of the company. *Postal Tel. Cable Co.* v. *Prewitt* (Tex. 1917) 199 S. W. 316. The stipulation, however, has been held to change this result. *Stamey* v. *Western Union Tel. Co.* (1894) 92 Ga. 613, 18 S. E. 1008. The test of the validity of stipulations limiting the liability of telegraph companies is its reason-

ableness, *Western Union Tel. Co.* v. *Bank of Spencer* (1916) 53 Okla. 398, 156 Pac. 1175; *O'Neill & Gyles* v. *Postal Tel. Cable Co.* (1915) 201 Ill. App. 37; *Primrose* v. *Western Union Tel. Co.* (1894) 154 U. S. 1, 14 Sup. Ct. 1098, and the fact that the reasonableness of this stipulation has been questioned but twice in the several decades that it has been found on the back of the Western Union blank forms would seem to indicate that people have had little reason to doubt it. Admitting the stipulation to be valid, the telegraph company, as a part of its defense, must prove either that the sender wrote the message on a blank form upon which the stipulation was printed, when he will be presumed to know of the condition, *Kiley* v. *Western Union Tel. Co.* (1888) 109 N. Y. 231, 16 N. E. 75, or, if not written upon such a form, that he knew of the stipulation. *Clement* v. *Western Union Tel. Co.* (1884) 137 Mass. 463. In New York the stipulation is not binding unless the message is written on one of the blanks, even though the sender knew of the limitation. *Pearsall* v. *Western Union Tel. Co.* (1891) 124 N. Y. 256, 26 N. E. 534; see *Western Union Tel. Co.* v. *Schade* (1917) 137 Tenn. 214, 192 S. W. 924.

WORKMEN'S COMPENSATION—ACCIDENT INSURANCE.—A servant fractured his arm in May while his employer was insured by the X Insurance Company. In September, after having returned to work, he attempted to crank an automobile, thereby causing the fracture to part. The employer was then insured by the Y Insurance Company. In a suit against the X Insurance Company, it was held liable, the second injury being but a result of the first. *Phillips* v. *Holmes Express Co.* (App. Div., 3rd Dept. 1919) 179 N. Y. Supp. 400.

The question involved in the case is but one of causation. The defendant insured the employer against liabilities arising out of the Workmen's Compensation Act. Under the Act the employee is recompensed for all injuries arising "out of and in the course of his employment", except those wilfully inflicted by the employee upon himself. Workmen's Compensation Law, N. Y. Consol. Laws, c. 67 (Laws of 1914, c. 41) § 10. If the injury in September was a legal consequence of the injury in May—and this is a question of fact—it would be an injury arising out of the course of his employment in May. *Sullivan* v. *Industrial Engineering Co.* (1916) 173 App. Div. 65, 158 N. Y. Supp. 970; *cf. Bishop* v. *St. Paul City Ry.* (1892) 48 Minn. 26, 50 N. W. 927; *Godwin* v. *Atlantic Coast Line R. R.* (1904) 120 Ga. 747, 751, 48 S. E. 139. This could better have been shown if the plaintiff had had a different employer in September. The first employer would have been liable for the injury sustained while the plaintiff was working for the second employer. *Cf. Sullivan* v. *Industrial Engineering Co., supra.* But there are statements in the case from which one might infer that the court thought the second insurance company would not be liable for the second injury. This would seem to be wrong. They also promised to indemnify the employer against liabilities arising under the Workmen's Compensation Act. And there is no doubt, to return to our hypothetical case, that the second employer would be liable for the injury in September, so long as it was an injury arising in the course of the servant's employment. *Mazzarisi v. Ward & Tully* (1916) 170 App. Div. 868, 156 N. Y. Supp. 964. Hence, it would seem to follow that the second company would also be liable for the second injury, for they are in the same position as if they were insurers for a second employer.